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Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

Chairman: Mr. Philippe **Kirsch** (Canada)

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I. Introduction

1. The General Assembly, in resolution 52/165 of 15 December 1997, recommended that the Ad Hoc Committee established pursuant to resolution 51/210 of 17 December 1996, hold its second session from 17 to 27 February 1998 to elaborate an international convention for the suppression of acts of nuclear terrorism. It further recommended that the work continue during the fifty-third session of the General Assembly, from 28 September to 9 October 1998, within the framework of a working group of the Sixth Committee.

2. Accordingly, the Sixth Committee, at its 2nd meeting, on 16 September 1998, established such a Working Group and elected Mr. Philippe Kirsch (Canada) as its Chairman.

3. The Sixth Committee decided, at its 2nd meeting on 16 September 1998, to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency (IAEA).

4. The Working Group held 13 meetings, from 28 September to 9 October 1998.

5. The Working Group had before it the report of the Ad Hoc Committee on the work of its second session,[1] containing a draft text of the convention on the suppression of acts of nuclear terrorism submitted by the Russian Federation.[2] At its first meeting, on 28 September 1998, a discussion paper prepared by the Friends of the Chairman, composed of the members of the Bureau of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (A/C.6/53/WG.1/CRP.1), was tabled before the Working Group for its consideration.

6. The Working Group also had before it several oral and written proposals submitted during its meetings. The texts of the written proposals are contained in annex II to the present report.

II. Proceedings of the Working Group

7. Discussions were held both in the Working Group and in informal consultations. On the basis of those discussions and written proposals and amendments tabled before the Working Group, a new discussion paper was prepared by the Friends of the Chairman for consideration by the Working Group (A/C.6/53/WG.1/CRP.1/Rev.1).

8. The Friends of the Chairman subsequently prepared a revised text of the draft convention (A/C.6/53/WG.1/CRP.35/Add.1), based on comments by delegations on the revised discussion paper (A/C.6/53/WG.1/CRP.1/Rev.1) and proposals on those articles not contained in the paper, i.e. article 2, paragraph 4 of article 4, article 10 and the preamble. The revised text proposed by the Friends of the Chairman is contained in annex I to the present report.

9. Annex III contains an informal summary of the discussions in the Working Group prepared by the Chairman for reference purposes only and not as a record of the discussions.

III. Recommendations of the Working Group

10. At its 13th meeting, on 9 October 1998, the Working Group decided to refer the consideration of the present report to the Sixth Committee. The Working Group forwards its report to the Sixth Committee on the understanding that several delegations have expressed their concerns on certain provisions of the draft International Convention for the Suppression of Acts of Nuclear Terrorism, including its scope of application.

Notes

[1] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 37* (A/53/37).

[2] Ibid., annex I.

Annex I

Revised text proposed by the Friends of the Chairman

Draft International Convention for the Suppression of Acts of Nuclear Terrorism

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,[1]

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Bearing in mind the Convention on the Physical Protection of Nuclear Material of 1980,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, *inter alia*, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

Recalling also that, pursuant to General Assembly resolution 51/210, an ad hoc committee was established to elaborate, *inter alia*, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments,

Noting that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Noting also that existing multilateral legal provisions do not adequately address those attacks,

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[1] General Assembly resolution 50/6 of 24 October 1995.

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

Noting that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.

2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. "Nuclear facility" means:

(a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;

(b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

4. "Device" means:

(a) Any nuclear explosive device; or

(b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or the environment.

5. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

6. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(a) Possesses radioactive material or makes or possesses a device:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or the environment;

(b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

2. Any person also commits an offence if that person:

(a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in subparagraph 1 (b) of the present article; or

(b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 9, paragraph 1 or paragraph 2, to exercise jurisdiction, except that the provisions of articles 7, 12, 14, 15, 16 and 17 shall, as appropriate, apply in those cases.

Article 4

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 5

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its national law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 7

1. States Parties shall cooperate by:

(a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;

(b) Exchanging accurate and verified information in accordance with their national law and in the manner of and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal

proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in article 9 in respect of the commission of the offences set forth in article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations.

2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

4. States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis.

Article 8

For purposes of preventing offences under this Convention, States Parties shall make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency.

Article 9

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law.

Article 10

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, subparagraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 9, paragraphs 1 and 2 and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 13

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 9, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 14

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 15

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 16

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation

or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of it shall:

(a) Take steps to render harmless the radioactive material, device or nuclear facility;

(b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and

(c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.

3(1) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3(2) of the present article, the State Party in

possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

3(2) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are as soon as possible placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such item pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3(2) of the present article, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of international organizations as necessary, to ensure effective implementation of this Convention.

Article 21

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. This Convention shall be open for signature by all States from _____ until _____ at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession,

the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the Depositary, who circulates it immediately to all States Parties.

2. If the majority of the States Parties request the Depositary to convene a Conference to consider the proposed amendments, the Depositary shall invite all States Parties to attend such a Conference to begin not sooner than three months after the invitations are issued.

3. The Conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the Conference shall be promptly circulated by the Depositary to all States Parties.

4. The amendment adopted pursuant to paragraph 3 of the present article shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on _____.

Annex II

Discussion papers, written amendments and proposals submitted to the Working Group

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15.	Russian Federation	A/C.6/53/WG.1/CRP.13	Article 10 [18]	32
16.	France	A/C.6/53/WG.1/CRP.14	Article 10 [18]	33
17.	China	A/C.6/53/WG.1/CRP.15	Article 1 [1]	34
18.	Japan	A/C.6/53/WG.1/CRP.16	Article 10 [18]	34
19.	Belgium	A/C.6/53/WG.1/CRP.17	Article 17 [26], paragraph 1	34
20.	Japan	A/C.6/53/WG.1/CRP.18/Rev.1	Article 10 [18], paragraph 2	34
21.	China	A/C.6/53/WG.1/CRP.19	Article 10 [18], paragraph 5	35
22.	Republic of Korea	A/C.6/53/WG.1/CRP.20	Article 10 [18], paragraph 1	35
23.	Austria	A/C.6/53/WG.1/CRP.21	Articles 10 [18] and 10 *bis* [18, paragraph 7]	35
24.	Pakistan	A/C.6/53/WG.1/CRP.22	Article 10 [18]	36
25.	Belgium and the Netherlands	A/C.6/53/WG.1/CRP.23	Article 17 [26]	37
26.	Federal Republic of Germany	A/C.6/53/WG.1/CRP.24	Article 10 [18]	37
27.	Ukraine	A/C.6/53/WG.1/CRP.25	Article 10 *bis* [18, paragraph 7]	39
28.	Revised text prepared by the Coordinator as a result of informal consultations	A/C.6/53/WG.1/CRP.26	Article 1 [1]	39
29.	Revised text prepared by the Coordinator as a result of informal consultations	A/C.6/53/WG.1/CRP.27	Article 1 *bis* [2]	39
30.	Bolivia	A/C.6/53/WG.1/CRP.28	Articles 4 [7] and 11	40
31.	France, Germany and Italy	A/C.6/53/WG.1/CRP.29	Article 10 [18], paragraph 5	40

	Country	*Symbol*	*Subject**	*Page*
32.	Mexico, Switzerland and Ukraine	A/C.6/53/WG.1/CRP.30	Article 2 [4]	41
33.	Revised text prepared by the Coordinator as a result of informal consultations	A/C.6/53/WG.1/CRP.31	Article 10 [18]	41
34.	Revised text prepared by the Coordinator as a result of informal consultations	A/C.6/53/WG.1/CRP.32	Article 4 [7], paragraph 4	42
35.	Lebanon, Libyan Arab Jamahiriya, Nigeria, the Sudan and Syria	A/C.6/53/WG.1/CRP.33	Article 1 *bis* [2]	42
36.	Pakistan	A/C.6/53/WG.1/CRP.34	Article 2 [4], paragraph 2	43
37.	Draft report of the Working Group	A/C.6/53/WG.1/CRP.35		43
38.	Argentina, Austria, Canada, Costa Rica and the Russian Federation	A/C.6/53/WG.1/CRP.36	Preamble	43

* Equivalent provisions contained in the articles in document A/C.6/53/WG.1/CRP.35/Add.1 (see annex I) are indicated in square brackets.

1. Discussion paper prepared by the Friends of the Chairman relating to the draft convention on the suppression of acts of nuclear terrorism* (A/C.6/53/WG.1/CRP.1)

This paper is a discussion paper, not a proposal. It has been prepared by the Friends of the Chairman on the basis of the debate that took place in the Ad Hoc Committee with a view to facilitating discussions in the Working Group.

The paper aligns a number of provisions contained in document A/AC.252/L.3 with the corresponding articles from the International Convention for the Suppression of Terrorist Bombings, with necessary adjustments. The provisions in L.3 that have been aligned are: articles 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18 and 20. In addition, articles 3 *bis*, 9 *bis*, 9 *ter*, 9 *quater*, 11 *bis*, 13 *bis*, 13 *ter* and the Testimonium have been added to the discussion paper and are based on provisions from the Terrorist Bombings Convention which were not included in L.3.

The following provisions of L.3 have been reproduced (with consequential changes) or redrafted: article 4, paragraph 3 (article 4 *bis* in the discussion paper), article 6, paragraph 4 (article 6, paragraph 7), article 11, article 12 and article 17.

The Friends of the Chairman did not feel that it was appropriate at this stage for them to undertake the drafting of texts for the preamble or articles 1, 1 *bis*, 2 or 10, or a provision based upon article 19 of the Terrorist Bombings Convention.

Preamble[1]

...

Article 1[2] **[1]**

[Definition of nuclear materials, etc.]

Article 1 *bis*[3] **[2]**

Article 1 *ter*[4] **[3]**

[See annex I]

Article 2[5] **[4]**

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* The numbering of the articles of this text follows that of document A/AC.252/L.3. It is understood that the structure of the text will need to be reviewed and adjusted in due course.

[1] The Friends of the Chairman did not feel that it was appropriate at this stage for them to undertake the drafting of a text for the preamble.

[2] The Friends of the Chairman did not feel that it was appropriate at this stage for them to undertake the drafting of a text for this article.

Where it is the case that nuclear materials, etc., are referred to in other provisions of the present text, it is understood that the terms used there may need to be reviewed and aligned with the terms which are to be defined in this article.

[3] The Friends of the Chairman did not feel that it was appropriate at this stage for them to undertake the drafting of a text for this article.

[4] This article follows the wording of article 3 of the Terrorist Bombings Convention.

The articles to which cross-reference is made in this article are identical in their substance to those to which cross-reference is made in article 3 of the Terrorist Bombings Convention.

[5] The Friends of the Chairman did not feel that it was appropriate at this stage for them to undertake the drafting of a text for this article.

Article 3[6] [5]

[See annex I]

Article 3 *bis*[7]

[See annex I]

Article 4[8] [7]

States Parties shall cooperate:

(a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 1 *bis*, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of those offences;

(b) By exchanging accurate and verified information in accordance with their domestic law and in the manner of and subject to the conditions specified in article 11, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 1 *bis*.

Article 4 *bis*[9] [8]

States Parties shall adopt all necessary legislative, administrative and technical measures to ensure the protection of radioactive material against illegal or unauthorized access to it by third parties.

Article 5[10] [9]

[See annex I]

Article 6[11] [10]

1. Upon receiving information that an offence set forth in article 1 *bis* has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information and to suppress that offence.

2. [See annex I]

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[6] This article follows the wording of article 4 of the Terrorist Bombings Convention.

[7] This article follows the wording of article 5 of the Terrorist Bombings Convention.

[8] This article follows the wording of article 15 (a) and (b) of the Terrorist Bombings Convention.

A cross-reference to article 11 of the current text has been included in paragraph (b) of this article, as was the case in article 4, paragraph 2, of document A/AC.252/L.3.

Paragraph 3 of article 4 of document A/AC.252/L.3 is now a separate article: see article 4 *bis*, below.

[9] The text of this article corresponds in substance to article 4, paragraph 3, of document A/AC.252/L.3.

[10] This article follows the wording of article 6 of the Terrorist Bombings Convention.

[11] Paragraph 1 of this article follows the wording of article 7, paragraph 1, of the Terrorist Bombings Convention, with the addition of the element of suppression which appears in article 6, paragraph 1, of document A/AC.252/L.3.

Paragraphs 2 to 6 follow the wording of article 7, paragraphs 2 to 6, of the Terrorist Bombings Convention.

Paragraph 7 reproduces article 6, paragraph 4, of documents A/AC.252/L.3 and Corr.1.

3. [See annex I]

4. [See annex I]

5. [See annex I]

6. [See annex I]

7. Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag or on board aircraft not registered in those States.

Article 7[12] [11]

[See annex I]

Article 7 *bis* [13] [12]

[See annex I]

Article 8[14] [13]

[See annex I]

Article 9[15] [14]

[See annex I]

Article 9 *bis* [16] [15]

[See annex I]

Article 9 *ter* [17]

[See annex I]

Article 9 *quater* [18] [17]

[See annex I]

Article 10[19] [18]

[Return of nuclear materials]

...

[12] Paragraph 1 of this article follows the wording of article 8, paragraph 1, of the Terrorist Bombings Convention.

Paragraph 2 follows the wording of article 8, paragraph 2, of the Terrorist Bombings Convention. The matters dealt with in article 7, paragraph 2, of document A/AC.252/L.3 are now addressed in a separate article: see article 7 *bis*, below.

[13] This article follows the wording of article 14 of the Terrorist Bombings Convention.

[14] Paragraphs 1 to 4 of this article follow the wording of article 9, paragraphs 1 to 4, of the Terrorist Bombings Convention. Paragraph 5 of that article has also been added.

[15] This article follows the wording of article 10 of the Terrorist Bombings Convention.

[16] This article follows the wording of article 11 of the Terrorist Bombings Convention.

[17] This article follows the wording of article 12 of the Terrorist Bombings Convention.

[18] This article follows the wording of article 13 of the Terrorist Bombings Convention.

[19] The Friends of the Chairman did not feel that it was appropriate at this stage for them to undertake the drafting of a text for this article.

Article 11[20]

1. States Parties shall exchange information in order to detect, prevent, suppress and investigate the offences set forth in article 1 *bis* of this Convention and also in order to institute criminal proceedings against and punish persons guilty of committing those crimes. In particular:

(a) A State Party shall take appropriate measures in order to inform without delay the other States referred to in article 5 of this Convention or States which, in its opinion, are concerned in respect of the commission of the offences set forth in article 1 *bis* as well as preparations to commit such offences about which it has learned, and also to inform, where necessary, international organizations;

(b) Where necessary, the States Parties concerned shall exchange information with one another or with international organizations about measures being taken by them to prevent and suppress the offences set forth in article 1 *bis*, the reasons underlying those offences, the means to carry them out, the persons who have committed them and the methods used to prevent and suppress them;

(c) Each State Party may, at its own discretion, communicate to another State Party or an international organization any other relevant information.

2. States Parties shall take appropriate measures consistent with their domestic law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. State Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to domestic law or which would jeopardize the security of the State concerned or the physical protection of nuclear material, nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations, nuclear devices or their components or objects of which they are components.

4. States Parties shall inform one another about their competent authorities and liaison points responsible for sending and receiving the information referred to in this article. Such authorities and liaison points must be accessible on a continuous basis.

Article 11 *bis* [21] **[19]**

[See annex I]

Article 12[22] **[20]**

States Parties shall conduct, through mutual agreement, consultations with one another directly or with the assistance of international organizations on all questions provided for under this Convention.

Article 13

[deleted]

Article 13 *bis* [23] **[21]**

[See annex I]

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[20] This article reproduces article 11 of document A/AC.252/L.3, with consequential drafting changes.

[21] This article follows the wording of article 16 of the Terrorist Bombings Convention.

[22] This article reproduces article 12 of document A/AC.252/L.3

[23] This article follows the wording of article 17 of the Terrorist Bombings Convention.

Article 13 *ter* [24] **[22]**

[See annex I]

Article 14[25] **[23]**

[See annex I]

Article 15[26] **[24]**

[See annex I]

Article 16[27] **[25]**

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the _____ instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the _____ instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 17[28] **[26]**

1. A State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall circulate it immediately to all States Parties. If a majority of States Parties request him or her to convene a conference to consider the proposed amendments, he or she shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the Secretary-General to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the Secretary-General of the United Nations. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State deposits its instrument of ratification, acceptance or approval of the amendment.

Article 18[29] **[27]**

[See annex I]

Article 19

[Deleted]

Article 20[30] **[28]**

[See annex I]

Testimonium[31]

[See annex I]

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[24] This article follows the wording of article 18 of the Terrorist Bombings Convention.

[25] This article follows the wording of article 20 of the Terrorist Bombings Convention.

[26] This article follows the wording of article 21 of the Terrorist Bombings Convention.

[27] This article follows the wording of article 22 of the Terrorist Bombings Convention.

[28] This article reproduces article 17 of document A/AC.252/L.3, with consequential drafting changes.

[29] This article follows the wording of article 23 of the Terrorist Bombings Convention.

[30] This article follows the wording of article 24 of the Terrorist Bombings Convention.

[31] This testimonium follows the wording of that of the Terrorist Bombings Convention.

2. Discussion paper prepared by the Friends of the Chairman relating to the draft convention on the suppression of acts of nuclear terrorism* (A/C.6/53/WG.1/CRP.1/Rev.1)

Article 1 [1]

[see annex I]

Article 1 *bis* [2]

[see annex I]

Article 1 *ter* [3]

[see annex I]

Article 2 [4]

...

Article 3 [5]

[see annex I]

Article 3 *bis* [6]

[see annex I]

Article 4 [7]

1. [see annex I]
2. [see annex I]
3. [see annex I]
4. ...

Article 4 *bis* [8]

[see annex I]

Article 5 [9]

1. [see annex I]
2. [see annex I]
3. [see annex I]
4. [see annex I]
5. [see annex I]

* The numbering of the articles of this text follows that of document A/AC.252/L.3.

6. Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag or on board aircraft not registered in those States.

Article 6 [10]

[see annex I]

Article 7 [11]

[see annex I]

Article 7 *bis* [12]

[see annex I]

Article 8 [13]

[see annex I]

Article 9 [14]

[see annex I]

Article 9 *bis* [15]

[see annex I]

Article 9 *ter* [16]

[see annex I]

Article 9 *quater* [17]

[see annex I]

Article 10 [18]

...

Article 11

[deleted]

Article 11 *bis* [19]

[see annex I]

Article 12 [20]

[see annex I]

Article 13

[deleted]

Article 13 *bis* [21]

[see annex I]

Article 13 *ter* [22]

[see annex I]

Article 14 [23]

[see annex I]

Article 15 [24]

[see annex I]

Article 16 [25]

[see annex II.1]

Article 17 [26]

[see annex I]

Article 18 [27]

[see annex I]

Article 19

[deleted]

Article 20 [28]

[see annex I]

Testimonium

[see annex I]

3. Proposal submitted by the Russian Federation (A/C.6/53/WG.1/CRP.2)

Article 1 *bis* [2]

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally possesses or uses, including by making, delivering, placing, transferring, altering, discharging, detonating or dispersing *radioactive materials or devices*,[1] or uses or damages a nuclear facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause substantial damage to property or the environment; or

(c) With the intent to compel a natural or legal person, an international organization or a State to do or to refrain from doing an act.

2. Any person also commits an offence if that person:

(a) Credibly threatens to commit an offence as set forth in paragraph 1 of the present articles;

(b) Demands the release or transfer of nuclear material by threat or use of force or by any other form of intimidation.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

[1] The underlined terms are to be brought into accordance with definitions finally agreed upon for article 1 (technical definitions).

4. Proposal submitted by the Federal Republic of Germany* (A/C.6/53/WG.1/CRP.3)

Article 1 *bis* [2]

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally possesses or uses, including by making, delivering, placing, transferring, altering, discharging, detonating or dispersing, radioactive material or devices or *causes substantial damage to* a nuclear facility *related to its nuclear components*:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause substantial damage to property or the environment.

2. Any person also commits an offence:

(a) If that person credibly threatens to commit an offence as set forth in paragraph 1

(i) *In order to compel a natural or legal person, an international organization or a State to do or refrain from doing an act; or*

(ii) *In a manner likely to gravely disturb the public peace.*

(b) If that person demands the release or transfer of nuclear material by threat or use of force or by any other form of intimidation.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 *or orders other persons to commit such offence*; or

(c) *Contributes in any other way* to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

5. Proposal submitted by Belgium (A/C.6/53/WG.1/CRP.4)

Preamble, article 2 [4] and article 13

Replace article 2 by the following and delete article 13:

"1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

"2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by

* This proposal is based on the proposal of the Russian Federation (A/C.6/53/WG.1/CRP.2), giving changes in italics. Deletions are not marked.

this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention."

Add to the preamble the following:

"*Noting* that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws."

6. Proposal submitted by Belgium* (A/C.6/53/WG.1/CRP.4/Add.1)

Addendum

Proposal concerning article 1 [1]

Add at the end of article 1: "Armed forces of a State" means the forces which a State organizes, trains and equips in accordance with its domestic law for the purposes of national defence or national security, as well as persons acting in support of such armed forces and who are placed officially under their command, their authority and their responsibility.

7. Proposal submitted by France (A/C.6/53/WG.1/CRP.5/Rev.1)

Article 1 *bis* [2], paragraphs 1 and 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally possesses or uses, including by making, delivering, placing, transferring, altering, discharging, detonating or dispersing radioactive materials, *or causes serious damage to the operation of a nuclear facility*:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause substantial damage to property or the environment; or

(c) With the intent to compel a natural or legal person, an international organization or a State to do or to refrain from doing an act.

2. Any person also commits an offence if that person credibly threatens to use radioactive materials or devices to cause death or serious bodily injury, or to cause substantial damage to property or the environment, or to compel a natural or legal person, an international organization or a State to do or to refrain from doing an act.

8. Proposal submitted by Australia (A/C.6/53/WG.1/CRP.6)

Article 4 [7]

Article 4 in the document A/AC.252/L.3 to be replaced with article 4 from the Friends of the Bureau's discussion paper (A/C.6/53/WG.1/CRP.1), as amended below and the

* *Source*: Article 1, paragraph 4, of the International Convention for the Suppression of Terrorist Bombings, without any change.

provisions of paragraphs 2 and 3 of article 11 of the L.3 document to be transferred to article 4 as follows:

Article 4

1. States Parties shall cooperate by:

(a) Taking all practicable measures, including, if necessary, adapting their domestic law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 1 *bis*, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the preparation of those offences;

(b) Exchanging accurate and verified information in accordance with their domestic law and in the manner of and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 1 *bis*.

2. States Parties shall take appropriate measures consistent with their domestic legislation to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State party or through participation in an activity carried out for the implementation of this Convention. If States parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to domestic legislation or which would jeopardize the security of the State concerned or the physical protection of nuclear material, nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations, nuclear devices or their components or objects of which they are components.

9. Proposal submitted by the Russian Federation (A/C.6/53/WG.1/CRP.7)

Article 1 [1]

For the purposes of this Convention:

1. "Radioactive materials" means material which contains nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation such as alpha-, beta-, neutron particles and gamma rays) and which may, due to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment. Radioactive material includes nuclear material.

2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. "Nuclear facility" means:

(a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, craft or objects or for any other purpose;

(b) Any plant or conveyance being used for the production, storage, processing or transport of nuclear material.

4. "Device" means:

(a) Any nuclear explosive device;

(b) Any radioactive material dispersal device;

(c) Any radiation-emitting device.

10. Proposal submitted by Guatemala (A/C.6/53/WG.1/CRP.8)

Article 6 [10], paragraph 1 (A/C.6/53/WG.1/CRP.1)

Divide the paragraph into two paragraphs: the first, numbered 1, *mutatis mutandis* identical with paragraph 1 of article 7 of the Terrorist Bombing Convention; the second, numbered 1 *bis*, to read as follows:

"1 *bis*. Upon receiving information that an offence set forth in article 1 *bis* has been committed or is being committed in its territory, a State party shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information and to suppress that offence."

11. Proposal submitted by Belgium* (A/C.6/53/WG.1/CRP.9)

Article 1 *bis* [2], paragraph 1, chapeau

Replace the chapeau by the following:

"1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally possesses or uses, [including by ... *exemplary list*], radioactive materials or devices, or *damages [substantially] a nuclear facility in a manner which releases or risks the release of radioactive material*:"

12. Proposal submitted by Australia, Austria, Belgium and the Netherlands (A/C.6/53/WG.1/CRP.10/Rev.1)

Articles 4 [7] and 11

Replace articles 4 and 11 by the following:

1. States Parties shall cooperate by:

(a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 1 *bis*, including measures to prohibit in their territories illegal activities of persons, groups and organizations that

* This proposal is based on the proposal of the Russian Federation (A/C.6/53/WG.1/CRP.2), giving changes in italics.

encourage, instigate, organize, knowingly finance [or knowingly provide technical assistance or information] or engage in the perpetration of those offences;

(b) Exchanging accurate and verified information in accordance with their national law and in the manner of and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 1 *bis* of this Convention and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular:

(i) A State Party shall take appropriate measures in order to inform without delay the other States referred to in article 5 of this Convention [or States which, in its opinion, are concerned] in respect of the commission of the offences set forth in article 1 *bis* as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations;

[(ii) Where necessary, the States Parties concerned shall exchange information with one another or with international organizations about measures being taken by them to prevent and suppress the offences set forth in article 1 *bis*, the reasons underlying those offences, the means to carry them out, the persons who have committed them and the methods used to prevent and suppress them.]

2. States Parties shall take appropriate measures [consistent with their national law] to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material, [nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations, nuclear devices or their components or objects of which they are components.][1]

4. States Parties shall inform the [depositary] [International Atomic Energy Agency] of their competent authorities and liaison points responsible for sending and receiving the information referred to in this article. The [depositary] [International Atomic Energy Agency] shall communicate such information regarding competent authorities and liaison points to all States Parties. Such authorities and liaison points must be accessible on a continuous basis.

13. Proposal submitted by China (A/C.6/53/WG.1/CRP.11/Rev.1)

Article 4 [7]

States Parties shall cooperate:

(a) ...

[1] The bracketed language depends on the final version of article 1.

(b) By conducting consultations with one another, or with the assistance of international organizations as necessary, to ensure the effective implementation of this Convention;

(c) (originally (b)).

14. Proposal submitted by Pakistan (A/C.6/53/WG.1/CRP.12)

Article 1 [1] (A/C.6/53/WG.1/CRP.7)

Add as new subparagraph 3 (c):

"Any nuclear facility under construction;"

15. Proposal submitted by the Russian Federation (A/C.6/53/WG.1/CRP.13)

Article 10 [18]

1. Upon the completion of any proceedings connected with an offence under article 1 *bis*, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned to the State Party to which it belongs or to the State Party whose natural or legal person is the owner of such material, device or facility, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained, after consultation with the States Parties concerned.

2. If national or international law prohibits a State Party from returning or accepting such radioactive material, device or nuclear facility in accordance with paragraph 1, the State Party in possession of it shall:

(a) Ensure that any nuclear material is stored in accordance with applicable International Atomic Energy Agency safeguards;

(b) Have regard to physical protection guidelines and health and safety standards published by the International Atomic Energy Agency;

(c) Ensure, if it is not lawful for that State to possess such radioactive material, device or nuclear facility, that it is immediately placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 2 (a).

3. If the radioactive material, device or nuclear facility referred to in paragraphs 1 and 2 of the present article does not belong to any of the States Parties or to a natural or legal person of a State Party and was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such material, device or facility pursuant to paragraph 2 (c) of the present article, a separate decision concerning its disposition shall be taken after consultations between the States and any relevant international organizations concerned.

4. For the purposes of paragraphs 1, 2 and 3 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties and any relevant international organizations, including the International Atomic Energy Agency.

5. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Secretary-General of the United Nations of the manner in which such radioactive material, device or facility was disposed of or retained. The Secretary-General of the United Nations shall transmit the information to the other States Parties.

16. Proposal submitted by France (A/C.6/53/WG.1/CRP.14)

Article 10 [18]

1. Upon the completion of any proceedings connected with an offence under article [1 *bis*], or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned to the State Party to which it belongs or of which the owner is a natural or legal person, national or resident or to the State Party from whose territory it was stolen or otherwise unlawfully obtained, after consultation with the States Parties concerned.

2. If national or international law prohibits a State Party from returning or accepting such radioactive material, device or nuclear facility in accordance with paragraph 1, the State Party in possession of it shall:

(a) Render safe the radioactive material, device or nuclear facility;

(b) Ensure that any nuclear material is stored in accordance with applicable International Atomic Energy Agency safeguards;

(c) Have regard to physical protection guidelines and health and safety standards published by the International Atomic Energy Agency;

(d) Ensure, if it is not lawful for that State to possess such radioactive material, device or nuclear facility, that it is immediately placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 2 (b).

3. If the item referred to in paragraphs 1 and 2 of the present article does not belong to any of the States Parties or to a national or resident of a State Party and was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive the item pursuant to paragraph 2 (d) of the present article, a separate decision concerning its disposition shall be taken after consultations between the States and any relevant international organizations concerned.

4. For the purposes of paragraphs 1, 2 and 3 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties and any relevant international organizations, including the International Atomic Energy Agency.

5. If an item has occasioned any dissemination at the time the offences under article 1 *bis* of this Convention were committed, the consequences of the return to a normal situation are governed by the general principles regarding the international responsibility of States.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Secretary-General of the United Nations of the manner in which such an item was disposed of or retained. The Secretary-General of the United Nations shall transmit the information to the other States Parties.

17. Proposal submitted by China (A/C.6/53/WG.1/CRP.15)

Article 1 [1]

1. Paragraph 1: delete "and which may, ... to the environment".

2. Paragraph 3: rewrite as follows:

"Nuclear facility" means:

(a) Any nuclear reactor, critical facility, conversion plant, fabrication plant, reprocessing plant, isotope separation plant or separate storage installation; or

(b) Any location where nuclear material in amounts greater than one effective kilogram is customarily used.

(Introduced from International Atomic Energy Agency document INFCIRC/153, article 106)

3. Paragraph 4: delete (b) and (c).

18. Proposal submitted by Japan (A/C.6/53/WG.1/CRP.16)

Article 10 [18]

Additional paragraph

No provision of the present article shall be construed as prejudicing the rights of *bona fide* third parties.

19. Proposal submitted by Belgium (A/C.6/53/WG.1/CRP.17)

Article 17 [26], paragraph 1

Replace, at the beginning of the third sentence, the words "If a majority of States Parties request him or her ..." with the following words:

"If *one third* of the States Parties request him or her ..."[1]

20. Proposal submitted by Japan (A/C.6/53/WG.1/CRP.18/Rev.1)

Article 10 [18], paragraph 2

2. If international instruments including international law or national law prohibit a State Party from returning or accepting such radioactive material, device or nuclear facility in accordance with paragraph 1, the State Party in possession of it shall cooperate with the State Party which is supposed to receive such radioactive material, device or nuclear facility to:

[1] *Source*: Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988).

21. Proposal submitted by China* (A/C.6/53/WG.1/CRP.19)

Article 10 [18], paragraph 5 (A/C.6/53/WG.1/CRP.14)

Alternative I

5. If an item has occasioned any dissemination at the time the offences under article 1 *bis* of this Convention were committed, the consequences of the return to a normal situation are governed by *international law and practice*.

Alternative II

5. If an item has occasioned any dissemination at the time the offences under article 1 *bis* of this Convention were committed, *the States Parties concerned shall make efforts to seek the return to a normal situation within the framework of international law and practice*.

22. Proposal submitted by the Republic of Korea (A/C.6/53/WG.1/CRP.20)

Article 10 [18], paragraph 1

Add the following words at the end of article 10, paragraph 1, of both the proposals by the Russian Federation (A/C.6/53/WG.1/CRP.13) and by France (A/C.6/53/WG.1/CRP.14):

"except where it is not considered feasible physically or legally to return them."

23. Proposal submitted by Austria (A/C.6/53/WG.1/CRP.21)

Article 10 [18]

1. *Where any radioactive material, device or nuclear facility is seized in a State Party in connection with an offence under article 1 bis, that State party shall,*

(a) Render *harmless* the material, device or nuclear facility;

(b) Ensure that any nuclear material is stored in accordance with applicable International Atomic Energy Agency safeguards; and

(c) Have regard to physical protection guidelines and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence under article 1 *bis*, or sooner if required by international law, the items referred to in paragraph 1 shall be returned to the State Party to which they belong. *Where the owner is not a State Party, the items shall be returned to the State Party whose national or resident the owner is or to* the State Party from whose territory they were stolen or otherwise unlawfully obtained after consultation with the States Parties concerned *to determine the most appropriate receiving State. The items referred to in paragraph 1 shall be transferred to the receiving State as soon as possible.*

3. *The modalities of such a return shall be determined in consultation with the States Parties concerned. The cost of such a return shall, in principle, be borne by States Parties as described in paragraph 2 unless otherwise agreed upon.*

* Changes are indicated in italics.

4. *Where such return is not lawful or where the States Parties concerned so agree, the State Party which has seized or recovered those items shall, subject to paragraph 5, keep them under its control as provided for in paragraph 1.*

5. *Where it is not lawful for a State Party to keep such items under its control, it shall* ensure that they are [immediately] placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1, *after consultation with that State.*

6. If the items referred to in paragraph 1 do not belong to a State Party *or the owner is not a national or resident* of a State Party or the items were not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive the items pursuant to paragraph 5, a separate decision concerning their disposition shall be taken after consultations between the States concerned and any relevant international organizations.

7. For the purposes of paragraphs 1 through 6, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties and any relevant international organizations, including the International Atomic Energy Agency. *States Parties and the relevant international organizations are encouraged to provide assistance pursuant to the present paragraph to the maximum extent possible.*

8. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility shall inform the *International Atomic Energy Agency* of the manner in which such items were disposed of or retained. the *International Atomic Energy Agency* shall transmit the information to the other States Parties.

Article 10 *bis* [18, paragraph 7]

Nothing in this Convention shall affect in any way the rules of international law governing liability for nuclear damage, or State responsibility.

24. Proposal submitted by Pakistan (A/C.6/53/WG.1/CRP.22)

Article 10 [18] (A/C.6/53/WG.1/CRP.13)

1. Amend paragraph 2 (c) as follows:

> "(c) Ensure, if the State is not equipped to possess such radioactive material, device or nuclear facility, that it is immediately placed in the possession of a State which is capable of handling such material and has provided assurances consistent with the requirements of paragraph 2 (a)".

2. In paragraph 4, end the provision at "... any relevant international organizations." Delete the rest of the sentence.

25. Proposal submitted by Belgium and the Netherlands (A/C.6/53/WG.1/CRP.23)

Article 17 [26]

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the Depositary, who circulates it immediately to all States Parties.

2. If the majority of the States Parties request the Depositary to convene a Conference to consider the proposed amendments, the Depositary shall invite all States Parties to attend such a Conference to begin not sooner than three months after the invitations are issued.

3. The Conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the Conference shall be promptly circulated by the Depositary to all States Parties.

4. The amendment adopted pursuant to paragraph 3 shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument.

26. Proposal submitted by the Federal Republic of Germany (A/C.6/53/WG.1/CRP.24)

Article 10 [18]

1. States Parties shall, where necessary, cooperate between themselves and with the International Atomic Energy Agency in accordance with the provisions of the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency of 26 September 1986 to facilitate prompt assistance in the event of a nuclear or radiological emergency resulting from an offence under article 1 *bis*. States Parties shall, where necessary, request the Agency, acting within the framework of its statute, to use its best endeavours in accordance with the above-mentioned Convention to promote, facilitate and support cooperation between States Parties.

2. If a State Party needs assistance in such circumstances, it may call for assistance from any other State Party, directly or through the Agency or from the Agency or, where appropriate, from other international organizations. States Parties to which a request for assistance is directed shall promptly decide and notify the requesting State Party, directly or through the Agency, whether it is in a position to render assistance, and the scope and terms of the assistance.

3. The Agency shall respond in accordance with its Statute to a request for assistance by:

(a) Making available appropriate resources allocated for this purpose;

(b) Transmitting promptly the request to other States and international organizations which, according to the Agency's information, may possess the necessary resources;

(c) If so requested by the requesting State, coordinating the assistance at the international level.

4. Upon completion of any proceedings connected with an offence under article 1 *bis* or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned to the State to which it belongs or to the State Party whose natural or legal person is the owner of such material, device or facility, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained after consultation with the States Parties concerned.

5. The cost of a return shall, in principle, be borne by States Parties as described in paragraph 4 unless otherwise agreed upon. These States Parties shall be obliged to accept the return.

6. If national or international law prohibits a State Party from returning or accepting such radioactive material, device or nuclear facility in accordance with paragraph 4 or where the return has become impossible for other reasons, the State Party in possession shall:

(a) Render safe the radioactive material, device or nuclear facility, upon request, if necessary with the support of States Parties capable of undertaking this task;

(b) Ensure that any nuclear material is stored in accordance with applicable International Atomic Energy Agency safeguards;

(c) Ensure that radioactive material and devices are handled and stored in accordance with applicable standards regarding physical protection and health and safety recommended by the International Atomic Energy Agency;

(d) Ensure that appropriate physical protection and health and safety measures are taken in accordance with applicable recommendations by the International Atomic Energy Agency;

(e) Ensure, if it is not lawful for a State to possess such radioactive material, device or nuclear facilities, that it is as soon as possible placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurance consistent with the requirements of paragraph 4.

7. If the radioactive material, device or nuclear facility referred to in paragraph 4 or 6 does not belong to any of the States Parties or to a natural or legal person of a State Party and was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such material, device or facility pursuant to paragraph 6, a separate decision concerning its disposition shall be taken after consultations between the States and any relevant international organizations concerned.

8. If dissemination has occurred, the cost of restoration measures and the possible return of wastes to a State whence an item originated shall be settled in accordance with international law. Nothing in this Convention shall affect the rules of international law governing the regime of civil liability for nuclear damage.

9. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility shall inform the Secretary-General of the United Nations of the manner in which such items were disposed of or retained. The Secretary-General shall transmit the information to the other States Parties and to the International Atomic Energy Agency.

27. Proposal submitted by Ukraine (A/C.6/53/WG.1/CRP.25)

Article 10 *bis* [18 (7)]

Nothing in this Convention shall affect in any way the rules of international law governing the regime of civil liability for nuclear damage.

28. Revised text prepared by the Coordinator as a result of informal consultations (A/C.6/53/WG.1/CRP.26)

Article 1 [1]

For the purposes of this Convention:

1. "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to its radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.

2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. "Nuclear facility" means:

(a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, craft or objects or for any other purpose;

(b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

4. "Device" means:

(a) Any nuclear explosive device; or

(b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

29. Revised text prepared by the Coordinator as a result of informal consultations (A/C.6/53/WG.1/CRP.27)

Article 1 *bis* [2]

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(a) Possesses radioactive material or makes or possesses a device:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or the environment;

(b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

2. Any person also commits an offence if that person:

(a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or

(b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.

3. ...

4. ...

(a) ...

(b) ...

(c) ...

30. Proposal submitted by Bolivia (A/C.6/53/WG.1/CRP.28)

Articles 4 [7] and 11

Replace articles 4 and 11 by the following:

1. States Parties shall cooperate by:

(a) Taking legislative and regulatory measures to prevent and counter the commission of the offences set forth in article 1 *bis* of this Convention;

(b) Exchanging information in accordance with its national and international security classification and on the conditions specified in article 5 of this Convention, as appropriate, to prevent, investigate, detect and suppress the offences set forth in article 1 *bis* of this Convention.

2. States shall inform the depositary of their competent authorities for the exchange of information referred to in this article. The depositary shall communicate such information to the competent authorities of all States Parties.

31. Proposal submitted by France, Germany and Italy (A/C.6/53/WG.1/CRP.29)

Article 10 [18], paragraph 5

5. Where the commission of the offences referred to in article 1 *bis* of this Convention causes nuclear damage, compensation shall be provided, following consultation and

cooperation among the States Parties concerned, in accordance with the principles and rules of applicable international law.

32. Proposal submitted by Mexico, Switzerland and Ukraine (A/C.6/53/WG.1/CRP.30)

Article 2 [4]

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. *Option A:* This Convention shall not apply to situations of international armed conflict, which shall be governed by international humanitarian law, nor shall it apply to issues of non-proliferation, which shall be governed by other rules of international law.

3. *Option B:* The activities of armed forces during an international armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

33. Revised text prepared by the Coordinator as a result of informal consultations (A/C.6/53/WG.1/CRP.31)

Article 10 [18]

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence under article 1 *bis*, the State Party in possession of it shall:

(a) Take steps to render harmless the radioactive material, device or nuclear facility;

(b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and

(c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence under article 1 *bis*, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national [or resident], or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.

3.1 Where a State Party is prohibited by national or international law [or an international instrument] from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3.2, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1.

3.2 Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are as soon as possible placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1

in consultation with that State, for the purpose of rendering it harmless [; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.].

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national [or resident] of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such item pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3.2, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to this article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

Article 10 *bis* [18, paragraph 7]

In the event of any dissemination in connection with an offence under article 1 *bis*, nothing in this Convention shall affect in any way the rules of international law governing [the regime of civil] liability for nuclear damage or other rules of international law.

34. Revised text prepared by the Coordinator as a result of informal consultations (A/C.6/53/WG.1/CRP.32)

Article 4 [7], paragraph 4

4. States Parties shall inform the depositary of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The depositary shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis.

35. Proposal submitted by Lebanon, Syria, Nigeria, Libyan Arab Jamahiriya and Sudan (A/C.6/53/WG.1/CRP.33)

Article 1 *bis* [2]

Add the following to the end of paragraph 1 (b): including by burying radioactive waste materia

Paragraph 1 (b) thus reads:

(b) With the intent to cause substantial damage to property or the environment, including by burying radioactive waste material.

36. Proposal submitted by Pakistan (A/C.6/53/WG.1/CRP.34)

Amendment to article 2 [4], paragraph 2

"The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, in so far as they conform to that law, are not governed by this Convention."

37. Draft report of the Working Group (A/C.6/53/WG.1/CRP.35 and Add.1-17)

...

38. Proposal submitted by Argentina, Austria, Canada, Costa Rica, and the Russian Federation (A/C.6/53/WG.1/CRP.36)

Preamble

The States Parties to the present Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,[1]

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Bearing in mind the Convention on the Physical Protection of Nuclear Material of 1980,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, *inter alia*, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

[1] General Assembly resolution 50/6 of 24 October 1995.

Recalling General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Recalling further that pursuant to General Assembly resolution 51/210 of 17 December 1996, an ad hoc committee was established to elaborate, *inter alia*, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments,

Noting also that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Noting further that existing multilateral legal provisions do not adequately address those attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

...[2]

Have agreed as follows:

[2] An additional preambular paragraph may be added pending the outcome of discussions on the text of the Convention.

Annex III

Informal summary of the discussions in the working group, prepared by the Chairman*

General discussion

1. At its first meeting, held on 28 September 1998, the Chairman introduced a new text of a draft convention on the suppression of nuclear terrorism contained in a discussion paper prepared by the Friends of the Chairman (A/C.6/53/WG.1/CRP.1). It was explained that, although the text was based on the draft convention proposed by the Russian Federation, as contained in document A/AC.252/L.3, it had been aligned with the International Convention for the Suppression of Terrorist Bombings adopted in 1997. The rationale for doing so arose out of the discussions during the second session of the Ad Hoc Committee, held from 17 to 27 February 1998, in which many delegations observed that the Russian text had been completed before the International Convention for the Suppression of Terrorist Bombings had been adopted and that the new instrument should be aligned on the text of the International Convention for the Suppression of Terrorist Bombings as much as possible.

2. The Chairman pointed out that the new text could be divided into three types of articles: those which the Friends of the Chairman did not feel appropriate to redraft without further discussion among interested States (the preamble, and articles 1, 1 *bis*, 2 and 10); those articles simply repeating the provisions contained in the Russian proposal (A/AC.252/L.3), or including substantive departures from provisions of the International Convention for the Suppression of Terrorist Bombings (articles 4, 4 *bis*, 6 (1) and (7), 11, 12 and 17); and those clauses contained in the International Convention for the Suppression of Terrorist Bombings and which were common to the instrument under consideration (articles 3, 5, 6, 7, 8, 9, 14, 15, 16, 18 and 20). The discussion paper was favourably received by many States and it was agreed to use it as a basis for the discussions of the Working Group on the draft Convention.

3. At the first meeting, the Working Group held a general exchange of views. Most delegations limited their remarks to reaffirming the importance of the elaboration of a convention for the suppression of nuclear terrorism. Many referred to the constructive debate held during the second session of the Ad Hoc Committee. Others commented on the importance of establishing the definition of terrorism. The Russian Federation announced its intention to circulate proposals regarding article 1 and 1 *bis*, concerning the definition of the nuclear material and the definition of offences included within the scope of the convention, respectively. Some delegations outlined their views on various issues, while reserving their positions regarding specific articles until the completion of the debate on those articles. The participation of the International Atomic Energy Agency and the International Committee of the Red Cross in the work of the Working Group was welcomed. Some delegations emphasized the need to develop a comprehensive legal system to combat acts of terrorism in accordance with General Assembly resolution 51/210 as a subsequent step to the final preparation of the new legal instrument concerned with combating nuclear terrorism. These delegations also emphasized the need to formulate a comprehensive definition of terrorism.

4. At the ninth meeting of the Working Group, held on 7 October 1998, the Chairman introduced a revised discussion paper prepared by the Friends of the Chairman

* Equivalent provisions contained in the articles in document A/C.6/53/WG.1/CRP.35/Add.1 (see annex I) are indicated in square brackets.

(A/C.6/53/WG.1/CRP.1/Rev.1). The Chairman limited his remarks to those articles that had undergone some change during the meetings of the Working Group and were thus different from document A/C.6/53/WG.1/CRP.1. Article 1 of the paper contained a text negotiated during informal consultations (see A/C.6/53/WG.1/CRP.26). Paragraphs 1 and 2 of article 1 *bis* also incorporated the results of informal consultations on the provision, contained in document A/C.6/53/WG.1/CRP.27. Paragraphs 3 and 4 of article 4 *bis*, were based on document A/C.6/53/WG.1/CRP.2. No text for article 2 was included in the paper, pending the conclusion of informal consultations. New article 4 contained a negotiated text (A/C.6/53/WG.1/CRP.10/Rev.1) amalgamating articles 4 and 11 contained in document A/C.6/53/WG.1/CRP.1. It was decided to defer the inclusion of the text of paragraph 4 of article 4 until the conclusion of the informal consultations on article 10. Article 4 *bis* was redrafted by the Friends of the Chairman on the basis of informal consultations. Paragraph 7 of article 6 was moved to article 5 as new paragraph 6, on the basis of a suggestion made in the Working Group. With regard to article 6, paragraph 1 was amended on the basis of the informal consultations held on the article. It was decided not to include a text for article 10, pending the results of informal consultations. Article 11 had previously been deleted. Article 12 was redrafted by the Friends of the Chairman on the basis of informal discussions. Article 13 had previously been deleted. A new article 17 was formulated on the basis of a text formulated during informal consultations (A/C.6/53/WG.1/CRP.23). Article 19 had been previously deleted.

5. With regard to paragraphs 1 (a) (i) and 1 (b) (i) of article 1 *bis*, the Chairman announced that there was an understanding among delegations that reference to "serious bodily injury" should be interpreted broadly so as to include serious harm to health.

6. At the Working Group's twelfth meeting, held on 9 October 1998, the Chairman introduced a revised text proposed by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1), contained in annex I of this report. It was stressed that the revised text was prepared for referral to the Sixth Committee and not for adoption by the Working Group. The revised text was based on the revised discussion paper previously prepared by the Friends of the Chairman (A/C.6/53/WG.1/CRP.1/Rev.1). It differed from the revised discussion paper in the following respects: a preamble was included, paragraph 3 (a) of article 1 was modified, new paragraphs 5 and 6 of article 1 were added, paragraph 4 of article 4 was included, a finalized article 18 was included, and article 25 had been modified. Paragraph 6 of article 5, as contained in document A/C.6/53/WG.1/CRP.1/Rev.1 (article 9 in document A/C.6/53/WG.1/CRP.35/Add.1), was deleted by the Friends of the Chairman, following the suggestion of the Working Group. Discussion within the Working Group based on the revised text is reported below under the respective provisions.

Preamble

7. Proposals for the preamble were contained in documents A/C.6/53/WG.1/CRP.4 and A/C.6/53/WG.1/CRP.36. In introducing the latter proposal, the delegation of Canada, on behalf of its co-sponsors, indicated that some of the preambular paragraphs were based on the 1980 Convention on the Physical Protection of Nuclear Material and the 1997 International Convention on the Suppression of Terrorist Bombings.

8. In introducing the revised text proposed by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1) at the Working Group's twelfth session on 9 October 1998, the Chairman explained that the preamble included in the text was based on the proposal contained in document A/C.6/53/WG.1/CRP.36, together with the proposal in document A/C.6/53/WG.1/CRP.4, as the final paragraph of the preamble.

9. Following the introduction of the revised text, concerns were raised regarding the inclusion of the last paragraph of the preamble. Some delegations expressly preferred its deletion in light of the existence of paragraph 3 of article 4 in the revised text.

10. One delegation referred to its proposal contained in document A/AC.252/1998/WP.24 and Corr.1, concerning the preamble, with a view to that proposal being taken into consideration.

Article 1 [1]

11. Discussion on article 1 was undertaken on the basis of a proposed text prepared by the delegation of the Russian Federation (see A/C.6/53/WG.1/CRP.7). In introducing the draft article, the Russian delegation indicated that it had been formulated on the basis of prior proposals introduced by the United States of America (see A/AC.252/1998/WP.36), and by Belgium and France (see A/AC.252/1998/WP.1/Rev.2), as well as suggestions received from the International Atomic Energy Agency.

12. As regards paragraph 1, the suggestion was made to delete the reference to the "environment". Another suggestion along these lines was to delete the sentence "and which may, due to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment" (see A/C.6/53/WG.1/CRP.15).

13. A further suggestion was made to move the list of consequences contained in paragraph 1 to the preamble. This view was opposed in the Working Group.

14. Concerning paragraph 2, the suggestion was made to quote article 20 of the statute of the International Atomic Energy Agency, so as to avoid possible confusion arising from differing definitions.

15. While the suggestion was made to retain paragraph 3 in the form presented in document A/C.6/53/WG.1/CRP.7, a further proposal was made to replace the entire paragraph with a new formulation (see A/C.6/WG.1/CRP.15).

16. It was proposed to insert the following text as new subparagraph (c) under paragraph 3: "Any nuclear facility under construction;" (see A/C.6/WG.1/CRP.12).

17. Regarding paragraph 4, a delegation expressed its preference for the deletion of subparagraphs (a) and (b). Another proposed the deletion of subparagraphs (b) and (c) (see A/C.6/WG.1/CRP.15).

18. While some support was expressed for the inclusion of a definition of illegal dumping of radioactive wastes or radioactive substances, as contained in a prior proposal (see A/AC.252/1998/WP.12), this was opposed by other delegations.

19. Following informal consultations, a revised proposal was tabled (A/C.6/53/WG.1/CRP.26). Discussion subsequently continued on the basis of a revised discussion paper prepared by the Friends of the Chairman (A/C.6/53/WG.1/CRP.1/Rev.1). The revised paper included the text proposed in document A/C.6/53/WG.1/CRP.26 as new article 1.

20. During the discussion on the new article 1, a reservation was expressed regarding the definition of "device" in article 1. The following two suggestions were also made:

(a) To include a definition of "government facility" based on the definition found in the International Convention for the Suppression of Terrorist Bombings;

(b) To add the word "vehicles" before "craft" in subparagraph 3 (a).

21. In introducing the revised text prepared by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1), at the Working Group's twelfth session on 9 October 1998, the Chairman explained that, following the suggestion made in the Working Group, subparagraph 3 (a) was amended to reflect "vehicles, aircraft or space objects". Reference was also made to the inclusion of the definitions of the terms "State or government facility" and "Military forces of a State" based on the equivalent provisions in the International Convention for the Suppression of Terrorist Bombings, as subparagraphs 5 and 6, following a suggestion made in the Working Group.

Article 1 *bis* [2]

22. The Working Group proceeded with its discussion of article 1 *bis* on the basis of the proposal tabled by the Russian delegation (see A/C.6/53/WG.1/CRP.2). The proposed text was based substantially on the 1980 Convention on Physical Protection of Nuclear Material and the 1997 International Convention for the Suppression of Terrorist Bombings.

23. With regard to the chapeau of paragraph 1, the following points were made by various delegations:

(a) Retention of the term "devices" was considered by some to be superfluous;

(b) Retention of the illustrative list of possible "uses" was commented upon by several delegations. While many did not favour the inclusion of such a list for fear that it may be considered exhaustive, most expressed some flexibility on the matter. Others suggested that the list be deleted in favour of more inclusive language;

(c) Deletion of the reference to "making", "transferring" and "altering" as possible uses of radioactive materials or devices was favoured by one delegation;

(d) Possible inclusion of the phrase "or threatens to use" after the words "possesses or uses", so as to allay the concerns of delegations regarding the overlap between paragraphs 1 (c) and 2 (a) (see below), was suggested;

(e) Insertion of the following text after the word "devices": "or dumping radioactive wastes or radioactive substances, whether on the high seas or inland";

(f) Question of the clarification of the phrase "or uses or damages a nuclear facility" was raised. Some delegations expressed concern that the provision might criminalize, *inter alia*, peaceful protests at nuclear facilities. Two proposals were tabled in this regard: a Belgian proposal (see A/C.6/53/WG.1/CRP.9) replacing the phrase with "damages [substantially] a nuclear facility in a manner which releases or risks the release of radioactive material"; and a proposal by France (see A/C.6/53/WG.1/CRP.5/Rev.1) to replace the phrase with the following, "or causes serious damage to the operation of a nuclear facility". A third variation, proposed orally during the meeting, replaced the phrase with the following text: "or causes substantial damage to a nuclear facility related to its nuclear components". Another option explored in this regard was the possibility of deleting the reference to "uses or damages a nuclear facility", leaving it to be covered by a broad definition of nuclear material in article 1. It was also recommended that the phrase "unlawfully or intentionally" be inserted before "uses or damages a nuclear facility".

24. The suggestion was made to add a reference to "serious harm to health" at the end of subparagraph (a).

25. Different opinions were expressed regarding the reference to the environment in subparagraph (b). While some delegations raised doubts regarding its inclusion since damage to the environment may be implicit in either "death or serious bodily injury" or "substantial damage to property", others favoured its retention. One delegation favoured the expansion

of the scope of the provision. It felt that the requirement of "substantial" damage being caused to the environment may be too strict.

26. Subparagraph (c) of article 1 was the subject of much debate. Two opposing views emerged. The first brought into question the usefulness of dealing with compulsion within the context of paragraph 1, as opposed to paragraph 2. In this regard, a proposal was made to amalgamate paragraph 1 (c) with paragraph 2, so as to link compulsion with the threat to commit an offence (see A/C.6/53/WG.1/CRP.3). Some delegations expressed support for the further inclusion of the element of the disturbance of the public peace, and/or the creation of a state of terror, in the newly amalgamated paragraph 2. Others opposed such amalgamation, preferring to draw a distinction between the activities envisaged in subparagraph 1 (c) and paragraph 2.

27. In addition, several delegations questioned the inclusion of the word "credibly" in subparagraph 2 (a). Some were of the view that the evaluation of the seriousness of the alleged threat should be left to the domestic courts concerned. While several delegations therefore favoured the deletion of the word, others supported its inclusion. It was further suggested to link the credibility of the threat to the possession of the nuclear material.

28. With regard to subparagraph 2 (b), some delegations viewed the formulation as being too broad, while another delegation pointed to the fact that the provision essentially reproduces the wording in the 1980 Convention on Physical Protection of Nuclear Material. In this context, a further suggestion was made that the phrase "transfer of nuclear material" be clarified.

29. A proposal was tabled to replace paragraph 2 in its entirety with the following text (see A/C.6/53/WG.1/CRP.5/Rev.1) : "Any person also commits an offence if that person credibly threatens to use radioactive materials or devices to cause death or serious bodily injury, or to cause substantial damage to property or the environment, or to compel a natural or legal person, an international organization or a State to do or refrain from doing an act."

30. In introducing paragraphs 3 and 4, the Russian delegation noted that those paragraphs were based entirely on the same provisions in the International Convention for the Suppression of Terrorist Bombings. While no views were expressed on paragraph 3, a proposal was made to include the phrase "or orders other persons to commit such offence" at the end of subparagraph 4 (b). A delegation reserved its position with regard to the formulation of subparagraph (c). One of the proposals before the Working Group no longer included a reference to paragraph 3 in subparagraphs (b) and (c) of paragraph 4 (see A/C.6/53/WG.1/CRP.3).

31. Following informal consultations, a revised proposal was tabled (see A/C.6/53/WG.1/CRP.27). Discussion subsequently continued on the basis of a revised discussion paper prepared by the Friends of the Chairman (A/C.6/53/WG.1/CRP.1/Rev.1). The revised paper included a combination of the text of paragraphs 1 and 2 as proposed in document A/C.6/53/WG.1/CRP.27, with paragraphs 3 and 4 of document A/C.6/53/WG.1/CRP.2, as new article 1.

32. During the discussions that followed the introduction of the revised discussion paper of the Friends of the Chairman, the suggestion was made to include a reference to illegal dumping of radioactive substances, whether on the highs seas or on land (see A/C.6/53/WG.1/CRP.33). In this regard, a suggestion was made to add the phrase "including by dumping of nuclear waste" after the term "environment", in paragraph 1 (a) (ii). This was opposed within the Working Group. A preference was also expressed for the deletion of the phrase "or makes or possesses a device" in subparagraph 1 (a).

33. Regarding paragraph 2, reservations were expressed concerning the qualification of the threat as being "credible". It was explained that this approach constituted a departure from previous anti-terrorism conventions, and should therefore be applied with caution as it may affect the interpretation of existing agreements and the negotiation of future instruments. However, the delegations raising this concern stated that they could accept the qualification in paragraph 2 if the Working Group decided to retain it.

34. It was further proposed to restrict the application of paragraph 3, dealing with attempts to commit an offence, to only subparagraph (b) of paragraph 1, and not to the entire paragraph 1. This view was motivated by the concern that the provision unnecessarily criminalized attempted possession of radioactive material, as contemplated in subparagraph (a). This was opposed on the basis that the retention of the reference in paragraph 3 to both possession and use was necessary to prevent acts of nuclear terrorism in their preparatory stages.

35. In introducing the revised text proposed by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1), at the Working Group's twelfth session on 9 October 1998, the Chairman explained that the Friends of the Chairman had considered the proposal contained in document A/C.6/53/WG.1/CRP.33 to include a reference to dumping of radioactive wastes. It was decided not to include the reference, as it would require a realignment of the text which the drafters felt unable to do at that stage.

36. During the discussion following the introduction of the revised text, some delegations expressed their preference for the inclusion of the reference to dumping of radioactive wastes, along the lines of the proposal in A/C.6/53/WG.1/CRP.33.

Article 2 [4]

37. The Working Group conducted its discussion on article 2 on the basis of the draft text submitted by the Russian Federation (see A/AC.252/L.3 and Corr.1 and 2), and on article 19 of the 1997 International Convention for the Suppression of Terrorist Bombings. During the debate, further proposals on article 2 were tabled (see A/C.6/53/WG.1/CRP.4 and Add.1, A/C.6/53/WG.1/CRP.30 and A/C.6/53/WG.1/CRP.34).

38. Suggestions were made to reproduce the wording of article 19 of the Terrorist Bombings Convention. Some favoured the inclusion of the last preambular paragraph of that Convention in the instrument under consideration. A further reference was made to the need to include a definition of "military forces" in article 1, along the lines of the Terrorist Bombings Convention (see A/C.6/53/WG.1/CRP.4/Add.1).

39. Other delegations felt it was necessary, in view of the nature of the Convention and the definitions of the crime contained in article 1 *bis*, to refine the language of article 2 to exclude from the scope of application only those activities of State military forces that are regulated by other norms of international law. For these delegations, although language of article 19 of the International Convention for the Suppression of Terrorist Bombings had the same intention, it contained a certain ambiguity which should not be repeated in an instrument concerning nuclear terrorism.

40. It was also suggested that the wording of article 19 be followed with some adjustments so as to take into account the contested legality of the use of nuclear weapons in armed conflict. Others recommended following the formula in article 19 with the addition of a clause excluding matters covered by international humanitarian law and the non-proliferation regime, or a savings clause on immunities of vessels and aircraft owned or operated by a State for non-commercial purposes.

41. With regard to the limitation of the scope of the convention to individuals, several delegations indicated flexibility on the precise wording of the provision.

42. A suggestion was made to only include paragraph 1 of article 19 of the Terrorist Bombings Convention as article 2.

43. Other delegations indicated the importance of broadening the scope of the provision to cover acts of nuclear terrorism sponsored by States. It was further pointed out that a comprehensive definition of terrorism, including State terrorism, would be needed, since a piecemeal approach to this phenomenon, based on assumed crimes, cannot be an effective tool in the fight against it. For this reason, these delegations re-emphasized the need for a general convention dealing with acts of international terrorism in all its aspects and manifestations. Others opposed this view, emphasizing the need to continue efforts aimed at combating specific manifestations of terrorism based on the well-es ablished practice of previously adopted conventions and taking into account political realities.

44. In a statement (A/C.6/53/WG.1/INF.1), the secretariat of the International Committee of the Red Cross presented some comments and suggestions on the scope of application of the draft convention, touching upon questions relating to humanitarian law and its application as a *lex specialis*, and the exclusion clause as compared with article 19 of the Terrorist Bombings Convention. It was recommended that the Chairman issue a statement indicating that the new convention will not legitimize certain means of warfare.

45. A delegation expressed reservations as to the need to refer to the immunity of space objects in paragraph 2 of article 2 of document A/AC.252/L.3 and Corr.1 and 2.

46. In introducing article 4 of the revised text proposed by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1), at the Working Group's twelfth session on 9 October 1998, the Chairman explained that the provision was based on the proposal in document A/C.6/53/WG.1/CRP.4, together with the inclusion of the last preambular paragraph of the International Convention for the Suppression of Terrorist Bombings, as new paragraph 3.

47. In the discussion following the introduction of the revised text, a delegation expressed concern regarding the provision. Others linked the acceptability of the provision to the deletion of the last paragraph of the preamble.

Article 4 [7]

48. The Working Group proceeded with its consideration of article 4 on the basis of the draft text prepared by the Friends of the Chairman (see A/C.6/53/WG.1/CRP.1). In introducing the article, the Chairman noted that it was based on subparagraphs (a) and (b) of article 15 of the International Convention for the Suppression of Terrorist Bombings. It was also proposed to consider article 4 together with article 11.

49. The issue was raised as to the relationship of the provision with article 11. Some delegations favoured the merger of the two articles, while one opposed such action.

50. A proposal (see A/C.6/53/WG.1/CRP.6) was made to insert paragraphs 2 and 3 of article 11 of document A/C.6/53/WG.1/CRP.1 as new paragraphs 2 and 3 of article 4, as a possible approach to harmonizing articles 4 and 11.

51. A further suggestion was made to merge subparagraph (b) of article 4 with article 11 as a possible way to eliminate the overlap between the two provisions.

52. Some delegations also suggested the inclusion of the basic concept contained in article 12 within article 4. The following two suggestions were made in this context:

(a) To replace the chapeau of article 4 with: "For the purpose of accomplishing the objectives of this Convention, States parties shall cooperate, particularly:";

(b) To renumber subparagraph (b) as subparagraph (c) and insert the following text as new subparagraph (b): "By conducting consultations with one another, or with the assistance of international organizations as necessary, to ensure the effective implementation of this Convention" (see A/C.6/53/WG.1/CRP.11/Rev.1).

53. Following informal discussions, a further proposal concerning article 4 and 11 was tabled (see A/C.6/53/WG.1/CRP.10). While retaining parts of the text contained in document A/C.6/53/WG.1/CRP.1, the new text incorporated aspects of article 11, as proposed by the Friends of the Chairman, and of article 15 of the International Convention for the Suppression of Terrorist Bombings. The text also incorporated a prior proposal as paragraph 4 (see A/AC.252/1998/WP.21).

54. Regarding subparagraph (a) of paragraph 1 of the new proposal, while it was suggested that the word "illegal" be deleted, others supported the inclusion of the term after "territories" (see A/C.6/53/WG.1/CRP.10/Rev.1). It was also proposed to insert the phrase "provide technical assistance of information" after the words "knowingly finance" (see A/C.6/53/WG.1/CRP.10/Rev.1).

55. The proposal (see A/C.6/53/WG.1/CRP.11/Rev.1) regarding the insertion of a reference to consultations (as contemplated in article 12 of document A/C.6/53/WG.1/CRP.1) as new subparagraph (b), was reiterated in the context of the new proposal.

56. Concerning paragraph 2, support was expressed for the inclusion of the phrase "consistent with their national law" after the terms "appropriate measures".

57. In regard to paragraph 3, preference was expressed for the deletion of the words "nuclear fuel, radioactive products or waste, radioactive substances, nuclear installations, nuclear devices or their components or objects of which they are components", after "nuclear material" (see A/C.6/53/WG.1/CRP.10/Rev.1). Others supported the deletion of the entire paragraph.

58. It was also suggested to include a reference to the International Atomic Energy Agency after the word "depositary" in paragraph 4 (see A/C.6/53/WG.1/CRP.10/Rev.1).

59. A further proposal concerning articles 4 and 11 was tabled (see A/C.6/53/WG.1/CRP.28).

60. A draft revised text prepared by the Coordinator as a result of informal consultations regarding paragraph 4 of article 4 was tabled before the Working Group (see A/C.6/53/WG.1/CRP.32).

61. In introducing the revised text proposed by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1), at the Working Group's twelfth session on 9 October 1998, the Chairman explained that paragraph 4 of article 7, originally left out in the revised discussion paper (A/C.6/53/WG.1/CRP.1/Rev.1), was based on the proposal in document A/C.6/53/WG.1/CRP.32. An express reference to the Secretary-General of the United Nations was included in lieu of a general reference to the "depositary".

Article 4 *bis* [8]

62. The Working Group proceeded with its consideration of article 4 *bis* on the basis of the draft text prepared by the Friends of the Chairman (see A/C.6/53/WG.1/CRP.1). In introducing the article, the Chairman noted that it was a simplified version of paragraph 3 of article 4 in the text previously submitted by the Russian Federation (see A/AC.252/L.3 and Corr.1 and 2). It was explained that the Friends of the Chairman felt it advisable to separate the provision from article 4 and insert it as a new article 4 *bis*.

63. While support was expressed for retaining the formulation contained in the text prepared by the Friends of the Chairman, some changes were proposed. The latter included commencing the paragraph with the phrase, "For the purposes of preventing the commission of offences under this Convention"; and replacing "radioactive material" with "items defined in article 1". Some delegations raised reservations concerning the reference to "third parties" in the provision. Others noted the omission of a reference to illicit trafficking or to the International Atomic Energy Agency.

64. Several delegations supported replacing the provision with a more comprehensive formulation based on the proposal submitted by Croatia and Switzerland at the February meeting of the Ad Hoc Committee (see A/AC.252/1998/WP.33). Others called for redrafting the provision on the basis of consultations with the International Atomic Energy Agency or redrafting the provision in more general terms.

65. Some delegations favoured deleting the article entirely, *inter alia*, because it might encroach on the purview of IAEA and its role in the physical protection of nuclear material. Others favoured its inclusion, stating that it might add a useful dimension. Furthermore, the point was made that the relevant provision in the 1980 Convention on the Physical Protection of Nuclear Material (article 3) deals only with the peaceful uses of nuclear materials.

Article 5 [9]

66. Discussion on article 5 within the Working Group proceeded on the basis of the revised discussion paper prepared by the Friends of the Chairman and tabled before the Working Group at its ninth meeting on 7 October 1998 (see A/C.6/53/WG.1/CRP.1/Rev.1). The revised text included former paragraph 7 of article 6 (see A/C.6/53/WG.1/CRP.1) as new paragraph 6 of article 5. Reservations were expressed regarding the necessity of retaining this paragraph in light of the inclusion of a general savings clause in article 2.

67. In introducing article 9 of the revised text proposed by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1), at the Working Group's twelfth session on 9 October 1998, the Chairman explained that paragraph 6 of article 5 of the revised discussion paper was deleted following a suggestion made in the Working Group.

Article 6 [10]

68. The Working Group undertook its discussion of article 11 on the basis of the draft text prepared by the Friends of the Chairman (A/C.6/53/WG.1/CRP.1). In introducing the provision, the Chairman explained that the text follows its counterpart in the International Convention for the Suppression of Terrorist Bombings, with the addition of the element of suppression contained in document A/AC.252/L.3 and Corr.1 and 2.

69. The discussion focused on paragraphs 1 and 7 of article 6.

70. With regard to paragraph 1, the following issues were raised:

(a) Some delegations questioned the need to retain the reference to the element of suppression as it overlaps with articles 3, 3 *bis* and 4. Others agreed and proposed deleting the phrase "and to suppress that offence" at the end of the subparagraph.

(b) Another view was to retain the element of suppression, albeit in a separate paragraph 2 *bis* (see A/C.6/53/WG.1/CRP.8).

71. With regard to paragraph 7, the suggestion was made to move it to article 5 concerning the establishment of jurisdiction.

Article 8 [13]

72. Discussion on article 8 proceeded in the context of the revised discussion paper prepared by the Friends of the Chairman and tabled before the Working Group at its ninth meeting on 7 October 1998 (see A/C.6/53/WG.1/CRP.1/Rev.1). A suggestion was made to include a new paragraph requiring the custodial State to take into account the interests of the territorial State in the case of multiple requests for extradition.

Article 10 [18]

73. Discussion on article 10 proceeded on the basis of a proposal tabled by the Russian delegation (see A/C.6/WG.1/CRP.13). In introducing its proposal, the Russian delegation commented on the rules relating to the return of nuclear materials contained in article 5 of the 1980 Convention on Physical Protection of Nuclear Material. In their view, the task before the Working Group was to establish an effective mechanism for the return of such materials. In preparing its proposal, the Russian delegation took into account the issues raised in prior proposals (see A/AC.252/1998/WP.16 and A/AC.252/1998/WP.32/Rev.1).

74. Although it was suggested to revert to article 10 as originally envisaged in document A/AC.252/L.3, or to replace the article with a provision similar to article 5, paragraph 2, of the 1980 Convention on Physical Protection of Nuclear Material, most delegations limited their comments to the two proposals under consideration.

75. With regard to paragraph 1, the following suggestions were made:

(a) To replace the words "or to the State party whose natural or legal person is the owner of such material, device or facility," with the words "or of which the owner is a natural or legal person, national or resident", as contained in document A/C.6/53/WG.1/CRP.14;

(b) To establish a hierarchy of States parties under the obligation to accept the return;

(c) To insert the words "involved in the commission of a crime of which a person or persons are convicted as a result of those proceedings" after "nuclear facility";

(d) To insert the following text after "shall": ", if such material, device or facility has been confiscated or seized as a result of the proceedings,";

(e) To add the following text at the end of paragraph 1: "except where it is not considered feasible physically or legally to return them" (see A/C.6/53/WG.1/CRP.20).

76. Regarding paragraph 2, the following suggestions were made:

(a) To insert the following text at the end of the chapeau to paragraph 2: "cooperate with the State party which is supposed to receive such radioactive material, device or nuclear facility to:" (see A/C.6/53/WG.1/CRP.18/Rev.1);

(b) To delete the words "national or" before "international" in the chapeau, and replacing the word "law" before "prohibits" with "instruments including international law or national law" (see A/C.6/53/WG.1/CRP.18/Rev.1);

(c) To insert the following as new subparagraph (a), as contained in document A/C.6/53/WG.1/CRP.14, "render safe the radioactive material, device or nuclear facility";

(d) To include a provision on the obligation of the State of ownership to accept the return;

(e) To include a provision addressing the factual or technical impossibility of return.

77. The concern was raised in the context of subparagraph (c), that the provision may be insufficient. A closer alignment with the relevant activities of the International Atomic Energy Agency under the 1980 Convention on Physical Protection of Nuclear Material was suggested in this regard. A further proposal was subsequently submitted amending subparagraph (c) so as to require transfer to a State capable of handling radioactive material (see A/C.6/53/WG.1/CRP.22).

78. The following suggestions were made in the context of paragraph 3:

(a) To replace the phrase "radioactive material, device or nuclear facility" with "item", as contained in document A/C.6/53/WG.1/CRP.14;

(b) To replace the phrase "or to a natural or legal person" with "or to a national or resident", as contained in document A/C.6/53/WG.1/CRP.14;

(c) To insert the word "concerned" after the phrase "between the States".

79. The view was expressed, during the discussion of paragraph 4, that States parties possessing the requisite nuclear know-how should be under a legal obligation to reply favourably to requests contemplated in the provision. A proposal was subsequently submitted to delete the phrase ", including the International Atomic Energy Agency" at the end of the paragraph (see A/C.6/53/WG.1/CRP.22).

80. The following suggestions were made as regards paragraph 5:

(a) To replace the phrase "radioactive material, device or nuclear facility" with "an item", as contained in paragraph 6 of document A/C.6/53/WG.1/CRP.14;

(b) To replace the reference to the Secretary-General of the United Nations with "Director-General of the International Atomic Energy Agency",

(c) To add "and the Director-General of the International Atomic Energy Agency" after "the Secretary-General of the United Nations".

81. Several suggestions were made regarding the inclusion of additional paragraphs to the proposed text. Several delegations supported the inclusion of the following text as new paragraph 1, to precede paragraph 1, "Where any radioactive material, device or nuclear facility is seized in a State party in connection with an offence under article 1 *bis* that State party shall render that material, device or nuclear facility safe."

82. Paragraph 5 of document A/C.6/53/WG.1/CRP.14, regarding the international responsibility of States for the consequences of a dissemination at the time of the commission of an offence under the Convention, was the focus of substantial debate. While some expressed support for its inclusion in principle, others preferred not to include it within the Russian proposal as contained in document A/C.6/53/WG.1/CRP.13. The following reformulations and amendments to the provision were proposed by way of reaching agreement:

(a) To replace the sentence "the consequences of the return to a normal situation are governed by the general principles regarding the international responsibility of States" with "the cost of restoration measures and of return of items shall be settled through consultations and cooperation among States parties concerned, and in accordance with principles and rules of international law regarding civil liability for nuclear damage and international responsibility of States";

(b) To replace the sentence "the consequences of the return to a normal situation are governed by the general principles regarding the international responsibility of States" with "the States parties shall make efforts to seek the return to a normal situation within the framework of international law and practice" (see A/C.6/53/WG.1/CRP.19); or

(c) To replace the words "by the general principles regarding the international responsibility of States" with "by international law and practice" (see A/C.6/53/WG.1/CRP.19).

83. Support was expressed for the inclusion of a savings clause protecting the rights of *bona fide* third parties (see A/C.6/53/WG.1/CRP.16), as new paragraph 6.

84. The suggestion was also made regarding the inclusion of a provision relating to the cost of return in the case of no dissemination of nuclear materials.

85. Several further proposals on article 10 were tabled before the Working Group (see A/C.6/53/WG.1/CRP.21, A/C.6/53/WG.1/CRP.24, A/C.6/53/WG.1/CRP.25 and A/C.6/53/WG.1/CRP.29).

86. Following a series of informal consultations, a revised text prepared by the Coordinator was tabled (see A/C.6/53/WG.1/CRP.31). It was noted that the text should be acceptable to the majority of the participants in the informal consultations. Discussion proceeded on the basis of this text and document A/C.6/53/WG.1/CRP.29.

87. With regard to paragraph 2, the suggestion was made to delete the reference to "or resident", but was opposed by some delegations. The inclusion of the phrase "if required by international law" within the paragraph was questioned.

88. Some delegations expressed a preference for a more explicit reference to the costs of return and storage. In response, the Coordinator of the informal consultations brought to the Working Group's attention the understanding among delegations that the reference to "modalities of return" should be construed broadly to address the issue of costs.

89. As to paragraph 3 (1), a delegation reiterated its prior proposal contained in document A/C.6/53/WG.1/CRP.22. The suggestion was made to delete the reference to "or an international instrument", although this was opposed by a delegation. It was further suggested to reproduce the sentence "; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes", located at the end of paragraph 3 (2), at the end of paragraph 3 (1). Alternatively, both references could be inserted in a new paragraph 3 (3). It was recommended to replace the word "accepting" with "receiving".

90. Concerning paragraph 3 (2), the suggestion was made to retain the sentence "; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes" at the end of the provision.

91. Concerning paragraph 5, it was suggested to formulate the obligation to assist in a more imperative fashion. However some raised objections concerning this proposal. It was also recommended to add the phrase "the States parties concerned and" after the words "in particular".

92. As regards paragraph 6, some delegations recommended providing a role for the Secretary-General of the United Nations in the context of the paragraph.

93. The revised text prepared by the Coordinator included a new article 10 *bis* concerning liability for nuclear damage in the event of any dissemination. Some delegations expressed a preference for replacing article 10 *bis* with the proposed text contained in document A/C.6/53/WG.1/CRP.29, which expressly introduced a regime of responsibility regarding nuclear damage. However, support for the text of article 10 *bis* as contained in the Coordinator's text was also expressed. It was further suggested to insert article 10 *bis* as new paragraph 7 of article 10. Concerning the wording of article 10 *bis*, some modifications were recommended. Some delegations favoured replacing the words "this Convention" with "article 10". Others considered the phrase "or other rules of international law" to be unclear. It was proposed to delete the words "the regime of civil". This was opposed by a delegation. A tentative proposal to add words along the lines of "of radioactive material" after the word "dissemination" was also made.

94. In introducing article 18 of the revised text proposed by the Friends of the Chairman (A/C.6/53/WG.1/CRP.35/Add.1), at the Working Group's twelfth session on 9 October 1998, the Chairman explained that the provision was based on a modified version of the proposal in document A/C.6/53/WG.1/CRP.31. Reference to "or resident" in paragraphs 2 and 4 was retained, while that to "or an international instrument" was deleted. The sentence "such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes", at the end of paragraph 3 (2) was likewise retained, and reproduced at the end of paragraph 3 (1). On the basis of a suggestion made in the Working Group, former article 10 *bis* in document A/C.6/53/WG.1/CRP.31, was included as new paragraph 7 of article 18.

Article 11

95. The Working Group proceeded with its discussion of article 11 on the basis of the draft prepared by the Friends of the Chairman (see A/C.6/53/WG.1/CRP.1). The Chairman, in his introduction, confirmed that in preparing article 11, the Friends of the Chairman had reproduced the original text contained in document A/AC.252/L.3 and Corr.1 and 2, with some non-substantive changes.

96. Some delegations supported merging the provision with article 4, but this was opposed by other delegations.

97. Regarding the chapeau, various suggestions were made with a view to qualifying the general obligation to exchange information. These included: inserting the phrase "as appropriate" after "shall"; commencing the chapeau with the words "Where necessary"; or inserting "concerned" after "States Parties" and adding "with one another and with international organizations" after "information". A further suggestion involved replacing the phrase "and punish persons guilty of committing" with "persons alleged to have committed".

98. In subparagraph (a), the question was raised as to whether the phrase "or States which, in its opinion, are concerned" should be retained. Furthermore, one delegation suggested replacing the term "shall" with "may, where necessary".

99. The suggestion was made to delete subparagraph (b) on the basis that it may be redundant. Another delegation considered the phrase "to prevent and suppress" in the last sentence repetitious.

100. Although a delegation suggested the deletion of subparagraph (c), another preferred to draw a distinction between it and subparagraphs (a) and (b), hence justifying its insertion as new paragraph 1 *bis*. A further suggestion was made to encapsulate the concept reflected in article 12 within article 11 by adding the following words to the end of subparagraph (c): "on any matter relating to the objective of this Convention".

101. Concerning paragraph 2, while a suggestion was made to move the paragraph to article 4, others preferred retaining it within article 11. As to the substance of the provision, the suggestion was made to delete the phrase "consistent with their domestic law", which was considered too restrictive. This suggestion was opposed by another delegation.

102. The same suggestions made in connection with paragraph 2 regarding its reinsertion in article 4 was made in the context of paragraph 3. Similarly, the reference to "domestic law" was questioned for the same reasons as for paragraph 2, although another delegation opposed its deletion.

103. While one delegation preferred retaining the text of paragraph 4 in article 11 and in the form presented, others suggested a reformulation to focus the activities contemplated in the paragraph on the depositary. This latter proposal was contained within a broader proposal to merge articles 4 and 11 (see A/C.6/53/WG.1/CRP.10/Rev.1). The discussion on this proposal is reported in the context of article 4 above.

Article 12 [20]

104. Discussion on article 12 was undertaken on the basis of the text prepared by the Friends of the Chairman (see A/C.6/53/WG.1/CRP.1). In introducing the article, the Chairman explained that the Friends had decided to retain the text originally contained in document A/AC.252/L.3.

105. Several general suggestions were raised in the context of article 12. While there was support among several delegations for its deletion, others preferred retaining it. The following suggestions were made in this regard:

(a) To incorporate the article into article 14; this was expressly opposed by a delegation;

(b) To incorporate the article into article 4; or

(c) To incorporate the article into subparagraph 1 (c) of article 11.

106. A third set of views called for the retention of the article, albeit in a modified form. The following suggestions were made in this regard:

(a) To insert the following text after the word "shall": "as required for the purposes of accomplishing the objectives of this Convention";

(b) To replace the word "shall" with the more permissive "may";

(c) To delete the phrase "through mutual agreement";

(d) To add the phrase "or through the depositary" after the word "directly"; this formulation was expressly opposed by a delegation;

(e) To add the words "where necessary" after "directly or";

(f) To replace the words "all questions provided for under this Convention" with "matters dealt with therein"; or

(g) To replace the entire article with the following sentence: "The present Convention does not preclude consultations through mutual agreement on additional measures of cooperation".

Article 17 [26]

107. In introducing article 17, the Chairman proposed that the discussion proceed on the basis of the text prepared by the Friends of the Chairman (see A/C.6/53/WG.1/CRP.1), which substantially reproduces the prior text of article 17, contained in document A/AC.252/L.3. The version prepared by the Friends of the Chairman substitutes the word "depositary" with a reference to the "Secretary-General of the United Nations".

108. Two main suggestions were made during the debate. A proposal was made to replace the article with the text contained in article 32 of the 1994 Convention on Nuclear Safety. Alternatively, it was proposed that, if the text were to be retained, the reference to "a majority" of States Parties in paragraph 1 could be replaced with "one third" (see A/C.6/53/WG.1/CRP.17). Following informal consultations, a further proposal was tabled (see A/C.6/53/WG.1/CRP.23).